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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 547 /2004

Single Bench

APPELLANT
PLAINTIFF

Jamvanti Devi, W/o. Gopal Prasad, Aged about 47 years, Occupation - Cultivator, R/o. village - Kalyanpur, Tahsil-Surajpur, Distt. Surguja (C.G.)

VERSUS

RESPONDENTS
DEFENDANTS

1. Krishna, S/o. Kashi Jaiswal, Aged about 50 years, Occupation Cultivator, R/o. village Kalyanpur, Tahsil-Surajpur, Distt.Surguja (C.G.)

2. State of Chhattisgarh, Through Collector, Distt. Surguja (C.G.)

P.R. No. 25621 e4
Presented by Shri 19.12.15 - Shri S19
dated 19.12.15

SECOND APPEAL U/S.100 OF C.P.C.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A No. 547 **सन् 2004**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	11/12/2006 Shri Ashok Kumar Shukla, counsel for the appellant. Heard on admission. In Civil Suit No. 360-A/2002 in the Court of III Additional Civil Judge, Surajpur, the appellant/plaintiff had prayed for the relief of permanent injunction simplicitor on the ground of his possession over the suit land Khasra No. 2316, Rakba 0.39 Aare situated in village Kalyanpur, Tahsil Surajpur. The defendant No. 1/respondent contested the suit and pleaded that the plaintiff was not in possession of the suit land. It was pleaded that the defendant No. 1 was the title holder and in possession of the suit land. The learned IIIrd Additional Civil Judge, Class-II, Surajpur recorded a finding that the plaintiff had no title over the suit land. In para-27 of the judgment, while recording a finding that the plaintiff had failed to prove that he was in possession of the suit land since 50 years, it was observed that it appears that the plaintiff was in possession of the suit land on the date of suit and on this premise, a decree for permanent injunction in favour of the plaintiff and against the defendant No.1 was granted. The defendant No. 1 preferred an appeal No. 14-A/2003 before the IIIrd Additional District Judge, Surajpur. The First Appellate Court also affirmed the finding recorded by the lower court that the plaintiff had absolutely no title over the suit land. It also recorded a finding that the plaintiff had in collusion with the then Tahsildar, Surajpur, obtained a bogus patta over the suit land which had been cancelled by the Collector, Sarguja. On appreciation of evidence, the First Appellate Court came to the conclusion that the plaintiff was not in possession over the suit land on the date of suit and reversed the decree by dismissing the suit.	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक S.A No. 547 **सन् 2004**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

It is pertinent to note that the defendant had examined Rati Prasad @ Ratiram S/o Chamru (DW/2), Basant (DW/3), Manohar (DW/4), and Devnarayan (DW/5) in support of its pleading that the plaintiff was never in possession of the suit land.

Shri A.K. Shukla, learned counsel for the appellant at the very outset stated that the suit for permanent injunction was based on possession simpliciter and question of title was not germane. He placed reliance on **Rame Gowda (D) by L.Rs Vs. M. Varadappa Naidu (D) by L.Rs and another; 2004 AIR SCW 4205, P. Buchi Reddy and others Vs. Ananthula Sudhakar; AIR 1999 Andhra Pradesh 188 and Ishwara Bhat Vs. Annappa Naika; AIR 1997 Kerala 165,** in support of the contention that even the possession of a trespasser has to be protected as against the true owner.

Having considered the submissions advanced by the learned counsel for the appellant, I have perused the record.

In view of the fact that there is concurrent finding recorded by both the Courts below that the appellant had no title over the suit land and also the fact that the finding recorded by the First Appellate Court that the plaintiff was not in possession over the suit land on the date of suit is based on a proper appreciation of the evidence available on record, I am of the considered opinion that no substantial question of law is involved in the second appeal.

As a result, this appeal is dismissed at the stage of admission. Consequently, M.(C).P. No. 1684/2004, for grant of interim stay, M.(C).P. No. 147/2006 under order 39 Rule 1 & 2 of C.P.C., and I.A. Nos. 46/2006 and 3835/2006, for taking additional documents on record also stand disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge